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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,904	03/14/2000	Kenneth R. LaBounty	13797-1116	8475

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EXAMINER

HONG, WILLIAM

ART UNIT	PAPER NUMBER
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3725

DATE MAILED: 10/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Paper No. 14

Application Number: 09/524,904
Filing Date: March 14, 2000
Appellant(s): LABOUNTY ET AL.

Gerald E. Helget
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed September 16, 2002.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

Appellant's brief includes a statement that claims 1-12, 14-17, 19 and 20 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

5,992,023	Sederberg et al	11-1999
6,202,308	Ramun	3-2001

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-12, 14-17, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sederberg et al (US Patent 5,992,023, hereinafter "Sederberg") in view of Ramun (US Patent 6,202,308).

Sederberg discloses a heavy-duty demolition apparatus for attachment to an excavator comprising: a lower jaw (14) having a primary and secondary shearing blade (64, 66) and an upper jaw (16) having a primary and secondary shearing blades (114, 116); the lower primary blade is longer than the lower secondary blade (col. 7, lines 30-35); a pivot means (18) interconnecting the two jaws; a rigid guide blade (34) on the lower jaw; an open slot (92) between the lower shear blade and the guide blade; a cross blade (94) mounted on the inside of a tie plate (32) with a shim (96) mounted therebetween to adjust the distance between the tie plate and the cross blade; and a replaceable shearing tip (124) having a dovetail mounted on the distal end of the upper jaw having a mortise portion (126). Sederberg does not disclose: the cross blade and the shearing tip is indexable; and a specific angle between the cross blade and the tie plate.

Ramun discloses an indexable blade insert (10) in various positions on a heavy-duty demolition apparatus. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the various blades of Sederberg with indexable blades of Ramun to extend the useful life of the blade.

With regards to the specific angle between the cross blade and the tie plate, it has been held that it is not inventive to discover the optimum or workable ranges by routine

experimentation when general conditions are disclosed in the prior art. *In re Aller*, 220F, 2d 454, 105 USPQ 233 (CCPA 1955). Sederberg sets forth the general condition of a tie plate and a cross blade with a shim therebetween. The shim can be made to adjust the distance between the tie plate and the cross blade as well as the angle therebetween, and thus it would have been obvious to one of ordinary skill in the art at the time the invention was made to discover the optimum or workable ranges to obtain the optimal cut angle of the material being processed.

(11) Response to Argument

Appellant argues “Sederberg does not teach an indexable, rotatable cross blade removably mounted...” and there is no motivation to combine Sederberg and Ramun. *Appellant Brief*, page 4, second full paragraph. The Examiner respectfully traverses Appellant’s assessment of Sederberg. Although Sederberg does not explicitly disclose an “indexable” cross blade, Sederberg does disclose a cross blade (94) in figure 11 that can be rotated “to enable use of all four longitudinal edges thereof as the principal cutting edges.” *Sederberg Patent*, column 7, lines 65-67. Appellant’s reference to a boss (98) is only one embodiment of the Sederberg invention. The alternative Sederberg embodiment illustrated in figure 11 clearly does not contain the boss (98) but rather a bolting arrangement comparable to Appellant’s apparatus as illustrated in figure 1 in the instant application. Both blades of Sederberg and Ramun are rotatable and comparable, and accordingly, there is clear motivation to combine the “rotatable” blade of Sederberg with the “indexable” blade of Ramun. Moreover, the Examiner takes the position that the rotatable blade of Sederberg can be considered “indexable” and the combination of Ramun is cited in the rejection because the Appellant differentiate the two terms in his disclosure and Sederberg does not use the term “indexable” in his disclosure.

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Further, Appellant argues that the references do not teach or suggest a cross blade forming a first angle between one and thirty degrees with the tie plate. *Appellant's Brief*, page 4, last paragraph, through page 5, first paragraph. As noted in the above rejection of the claims, Sederberg discloses a relationship between the cross blade and the tie plate as noted by the Appellant. However, when general conditions are disclosed, it has been held that it is not inventive to discover the optimum or workable ranges by routine experimentation when general conditions are disclosed in the prior art. *In re Aller*, 220F, 2d 454, 105 USPQ 233 (CCPA 1955). The criticality of the broad range of one and thirty degrees can be obtained by routine experimentation.

The Examiner notes that the claims as written are not in condition for appeal. Specifically, Appellant has ignored the Examiner's repeated objection to claim 7 as being improper because it contains two sentences. Each claim shall have only one sentence. MPEP 608.01 (m). Additionally, the Appellant also ignored repeated objections to the Information Disclosure Statement and the drawings.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

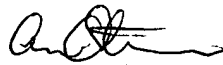


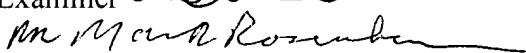
William Hong
Examiner
Art Unit 3725

wh

October 8, 2002

Conferees

Allen Ostrager - Supervisory Primary Examiner 

Mark Rosenbaum - Primary Examiner 

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